

**ENCLOSURE (3)**

Record of Military Whistleblower Reprisal Preliminary Inquiry  
NAVINGEN Hotline Case Number 201103664  
Sequence of Key Events (SKE)  
Commander (CDR) Scott Magnes, Medical Corps (MC),  
United States Navy (USN)

1. Sometime in July 2008, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' he assumed the position as Department Head, Orthopedics Department, NH Jacksonville, after a 30 to 45 minute turnover/orientation. [Tab 7]
2. Sometime in November 2008, as per CDR Magnes' Reprisal Complaint Letter of 3 November 2011 and Hotline Complaint Form, CDR Magnes met with [REDACTED], and reported that [REDACTED] was, "disruptive, defiant and insubordinate and that I felt that this was having a strongly adverse effect on my ability to run the department, as well as on the morale of the entire department." According to the complaint, CDR Magnes also reported similar issues to [REDACTED] and [REDACTED]. [Tab 5, 6]
3. Sometime in December 2008, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' the "DSS/ADSS talk [sic] with [REDACTED] about looking at my credentials file and [REDACTED] e-mails back that if they have concerns regarding my competence that they need to bring it to my [CDR Magnes'] attention and tell [REDACTED]. They never tell me anything." [Tab 7]
4. On 19 December 2008, as per [REDACTED] memorandum to CDR Magnes, subject, 'Counseling Session,' CDR Magnes was counseled regarding reporting to work on time, approachability/receptiveness, providing adequate patient follow-up, scanning of AHLTA notes, and the timely response to all taskers. [Tab 16]
5. On 19 December 2008, as per CDR Magnes' Reprisal Complaint Letter of 3 November 2011 and undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' he met with [REDACTED] and [REDACTED] and was told that there were a lot of complaints from [REDACTED]; however, no specific examples were given. According to CDR Magnes' Hotline Complaint Form and timeline, [REDACTED] gave him six weeks to fix the department or he would be fired at the Orthopedics Department Head. [Tab 5, 6, 7]
6. On 23 December 2008, as per CDR Magnes' Reprisal Complaint Letter of 3 November 2011, CDR Magnes met with [REDACTED] and reported that [REDACTED], "aberrant behavior had intensified." In addition, CDR Magnes voiced his disappointment with his 19 December 2008 meeting he had with [REDACTED]. According to CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' [REDACTED] gave him a book on leadership. As per CDR Magnes' e-mail to [REDACTED] subject, 'Thanks,' CDR Magnes stated, "Thanks

again for meeting with me today. I am very concerned regarding what has transpired and appreciate your help in orchestrating a game plan for success." [Tab 5, 6, 7]

7. On 5 January 2009, as per, 'Off-site After -- Action Report Monday, 5 January 2009,' of 7 January 2009, CDR Magnes held an off-site to get input from staff regarding concerns and what changes needed to be made in the Orthopedics Department. "In order to make things better for each individual and for the team as a whole." [redacted] was not in attendance. [Tab 17]

8. Sometime in March 2009, as per CDR Magnes' Hotline Complaint Form, he met with [redacted] and [redacted] and they indicated that there were no further complaints of any kind and that CDR Magnes had successfully addressed the issues. [Tab 6]

9. On 7 May 2009, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) -- September 2011 (PCS),' in a meeting with [redacted] and [redacted] after stating that he was not getting support from [redacted] and that he was in a 'no win' situation, CDR Magnes resigned as Department Head and stated he would turn in his resignation letter in the morning." [Tab 6, 7]

10. On 7 May 2009, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) -- September 2011 (PCS),' [redacted] was named as the [redacted]. [Tab 7]

11. Sometime in May 2009, as per TAD [Temporary Additional Duty]<sup>17</sup> Request Form, NAVHOSP Form 4651, CDR Magnes requested 'No Cost TAD' to travel to Montreal, Canada for 'Physician for CISM [International Military Sports Council] Swimming and Lifesaving Championships (Military World Championships). The request was disapproved by [redacted] on 29 May 2009 with the following comments, "1. MC [Medical Corps] TAD exceeded for FY09; and 2. Orthopod [orthopedics] manning [unreadable]." [Tab 18]

12. On 3 June 2009, as per Fitness Report & Counseling Record (E7-O6), CDR Magnes received a Periodic Regular 'Promotable' Fitness Report (FITREP) with a 'Member Trait Average' of 4.0 from [redacted] for the reporting period 15 August 2008 to 30 April 2009. CDR Magnes received a 5.0<sup>18</sup> in Professional Expertise, and Mission Accomplishment/Leadership; a 4.0 in Military Bearing/Character and Leadership; and a 3.0 in Command or Organizational Climate/Equal Opportunity and Teamwork. The Summary Group Average was 4.05. [Tab 19]

<sup>17</sup> Temporary travel away from the member's permanent duty assignment.

<sup>18</sup> As per the Bureau of Naval Personnel Instruction (BUPERSINST) 1610.10C, Navy Performance Evaluation System, the member trait average is calculated by adding up the numerical values for each performance trait and dividing by the total number of performance traits marked. The individual traits are rated, in ascending value, from "1.0" to "5.0." The performance trait grade of 3.0 represents performance to full Navy standards. The 5.0 trait grade is reserved for performance that is far above standards, and is notable for its exemplary or leadership quality. BUPERSINST 1610.10C Enclosure (1) goes on to state that, "Superstar Performance -- 5.0. Could be promoted two pay grades, and still be a standout in this trait. Advanced Performance -- 4.0. Far more than promotion ready in this trait right now." [Tab 13]

13. On 7 June 2009, as per CDR Magnes' e-mail to [REDACTED], subject, 'Meeting,' CDR Magnes wrote, "I have thought more about our meeting. Although I do not agree with all the statements made, my administrative duties did significantly decrease my clinical time. I am always interested in improving myself professionally, so would welcome the opportunity you have offered me to re-sharpen my surgical skills by going TAD to one of the major MTFs [military treatment facilities], as well as receiving training to enhance interpersonal skills." [Tab 46]

14. On 9 June 2009, as per [REDACTED] e-mail to CDR Magnes; subject, 'Meeting,' [REDACTED] wrote, "[REDACTED] and [REDACTED] are extremely pleased at your willingness to pursue the options we discussed last week. We're currently formulating a plan to support you so give me some time and [REDACTED] get back to you with some of our ideas and recommendations." [Tab 46]

15. On 30 July 2009, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' [REDACTED] refused to grant CDR Magnes his request for special liberty for Yom Kippur. In addition, [REDACTED] informed CDR Magnes that he was working on CDR Magnes' Focused Professional Practice Evaluation (FPPE)<sup>19</sup>. According to the timeline, CDR Magnes responded that he had agreed to refresher training and did not want a competency check. [Tab 7]

16. On 14 August 2009, as per CDR Magnes' e-mail to [REDACTED], subject, 'Dept. Letterhead,' CDR Magnes notified [REDACTED] that his credentials of 'Sports Medicine' had been deleted from the departmental letterhead. [REDACTED] responded that [REDACTED] apologized for the oversight and requested [REDACTED] correct the issue. [Tab 20]

17. On 18 August 2009, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' CDR Magnes met with [REDACTED] regarding what was happening. Specifically, CDR Magnes stated he had not received any objective evidence upon which the recommended competency check was based. [REDACTED] responded that [REDACTED] had minimal knowledge about what was going on but would talk with [REDACTED] [Tab 7]

[REDACTED]

<sup>19</sup> According to Navy Medicine (NAVMED) Policy 09-002, Policy of Focused Professional Practice Evaluation (FPPE); and Ongoing Professional Practice Evaluation (OPPE), a "FPPE provides each Privileging Authority (PA) an opportunity to evaluate the privilege specific competency of a practitioner who does not have documented evidence of competently performing the requested privilege(s) at the privileging organization. FPPE is time-limited and takes into account the practitioner's education, training, board certification and years of professional practice experience as a Licensed Independent Practitioner (LIP)." [Tab 12]

<sup>20</sup> Bureau of Medicine and Surgery Instruction (BUMEDINST) 6010.17B, Naval Medical Staff Bylaws, describes the Executive Committee of the Medical Staff (ECOMS) as the body empowered to act for the military treatment facility medical staff. The committee is delegated the primary authority over professional services and quality management activities provided by practitioners with clinical privileges. [Tab 40]

[REDACTED]

19. On 25 August 2009, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS)', CDR Magnes met again with [REDACTED] who stated [REDACTED] would support training if the department could support it. [REDACTED] stated that no one had challenged CDR Magnes' privileges or made a formal or informal complaint. [REDACTED] told CDR Magnes that a FPPE was not punitive. [Tab 7]

[REDACTED]

21. On 27 August 2009, as per CDR Magnes' e-mail to himself, subject, 'Dept. letterhead,' CDR Magnes noticed that 'Sports Medicine' had not yet been included on the departmental letterhead. [Ta 20]

22. In and around July to September 2009, as per CDR Magnes' undated, 'Complaint of Wrongs Under 1150 U.S. Navy Regulations<sup>22</sup>', and CDR Magnes' 12 December 2011 interview [REDACTED] placed CDR Magnes on call for a four-day weekend from 27 to 30 August 2009 and then again from 4 to 7 September 2009. [REDACTED] assigned CDR Magnes a clinic/call schedule very different from [REDACTED] in the Orthopedics Department. [Tab 7, 10, 15]

23. On 2 September 2009, as per CDR Magnes' 'Reprisal Complaint Letter' of 3 November 2011 (page 2), CDR Magnes met with [REDACTED] requesting that his FPPE be cancelled, that he be sent instead for refresher training, and reported that he, "Had not received any justification for the FPPE and that [REDACTED] was treating him differently than any other surgeon in the hospital and created a hostile work environment." [Tab 5]

[REDACTED]

<sup>21</sup> According to NAVMED Policy 09-002, "TJC [The Joint Commission] requires competency assessment be an ongoing process that promotes performance improvement activities, new developments in health care management, science and technology and ultimately enhances the delivery of patient care. ... OPPE monitoring requires the collection and review of performance improvement (PI), quality management (QM) patient care outcomes/indicators for all practitioners. OPPE Information is used to prepare the individual Performance Appraisal Report (PAR) which in turn is used by the PA to grant staff appointments and clinical privileges. [Tab 12]

<sup>22</sup> According to CDR Magnes, he never submitted the Complaint of Wrongs.

[REDACTED]

27. On 6 October 2009, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' he departed for Naval Medical Center (NMC) Portsmouth for his FPPE. [Tab 7]

28. On 8 October 2009, as per [REDACTED]

[REDACTED], 'Preliminary Command Inquiry into Claims of a Hostile Work Environment in the Orthopedics Department at NH Jacksonville, Florida,' [REDACTED] stated that there was a leadership issue, "evident friction" between [REDACTED] and CDR Magnes and that this needed to be handled by [REDACTED]. In addition, [REDACTED] stated that there was unintentional preferential treatment by [REDACTED], towards a specific ethnic group and religious comments in the workplace. According to the report [REDACTED] was counseled by [REDACTED] [Tab 21]

[REDACTED]

30. On 25 November 2009, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' CDR Magnes departed NMC Portsmouth after his FPPE was concluded. [Tab 7]

31. On 30 November 2009, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' [REDACTED] told CDR Magnes that he had been reassigned to the DSS Administration (rather than Orthopedics). [Tab 7]

32. On 29 January 2010, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' CDR Magnes was notified by [REDACTED] that he was to undergo a Peer Review Panel hearing. [Tab 7]

33. On 26 February 2010, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' [REDACTED] e-mailed CDR Magnes ordering him to remove all belongings out of his office by the next day and return the key to [REDACTED] [Tab 7]

[REDACTED]

35. On 29 May 2010, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' CDR Magnes' clinical privileges expired. [Tab 7]

[REDACTED]

37. On 28 June 2010, as per FITREP and Counseling Record (E7-O6), CDR Magnes received a Periodic, Detachment of Reporting Senior 'Promotable' FITREP with a 'Member Trait Average' of 3.0 from [REDACTED] for the reporting period 1 May 2009 to 30 April 2010. CDR Magnes received a 3.0 in all six performance traits. The Summary Group Average was 4.12. Block 40, Recommendation for Next Career Milestone stated, 'None.' [Tab 22]

38. From July to September 2010, as per CDR Magnes' 12 December 2011 testimony (page 68), [REDACTED] restricted CDR Magnes' leave; [REDACTED] told CDR Magnes that he could not have any leave, temporary additional duty or special liberty starting the last week of July 2009 through the end of September 2009. [Tab 10]

39. On 20 July 2010, as per CDR Magnes' letter to [REDACTED] CDR Magnes wrote his [REDACTED] complaining about the treatment he had received while at NH Jacksonville to include the Fair Hearing Panel and reinstatement of clinical privileges. [Tab 23]

[REDACTED]

[REDACTED]

42. On 27 July 2010, as per [REDACTED] NH Jacksonville, letter 5863 serial 00SM00/1695, to [REDACTED], [REDACTED] outlined the steps taken to ensure a fair review of CDR Magnes' clinical privileges. [REDACTED] went on to state that, "Throughout this process, the BUMED [Bureau of Medicine and Surgery] guidelines for fair and complete due process were followed to ensure a fair outcome for CDR Magnes and safe, high quality care for our patients. While there was a delay in presenting my findings and decision to CDR Magnes, this was the result of several factors, most importantly including an unexpected, three week long assignment overseas. In the interest of all concerns [REDACTED] felt it necessary to take [REDACTED] time and make the best possible decision." [Tab 23]

43. On or about 27 or 28 July 2010, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' CDR Magnes reported to the Credentials Office, NH Jacksonville, and completed his application for renewal of his clinical privileges. [Tab 7]

44. On 13 August 2010, as per CDR Magnes' letter to [REDACTED] CDR Magnes thanked [REDACTED] for the inquiry to his complaint, acknowledged [REDACTED] response and proved comment on [REDACTED] response, "To include several factual inaccuracies." CDR Magnes ended the letter by requesting, "A full Inspector General (IG) investigation be performed regarding the treatment I have received during my period of service here at NH Jacksonville and the dysfunction displayed by my [REDACTED]." Despite this, according to the cover sheet which was faxed to the MEDIG on 8 December 2011, CDR Magnes wrote, "Enclosed is a copy of the rebuttal that I wrote to the [REDACTED] response to my Congressional complaint, indicating several factual inaccuracies that might be misleading to the reader. I asked the [REDACTED] to please keep this rebuttal on file for possible future reference." [Tab 23 (less CDR Magnes' enclosures which can be found in Tabs 46 and 47)]

[REDACTED]

46. On 31 August 2010, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' CDR Magnes completed the required psychomotor skills testing. [Tab 7]



[REDACTED]

48. On 29 September 2010, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) -- September 2011 (PCS),' the interpersonal skills course was scheduled to start; however, it was postponed until the first week in November due to the lack of participants. [Tab 7, 34]

49. On or about 28 or 29 October 2010, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) -- September 2011 (PCS),' and [REDACTED] and [REDACTED] Memorandum for the Record (MFR) (undated), subject, 'Weekly Meeting ICO Scott A. Magnes, MC, USN' (date of meeting 28-29 October 2010), CDR Magnes was told by [REDACTED] that his privileging application was complete except for [REDACTED] signature. Although [REDACTED] had intended to reinstate CDR Magnes' privileges, [REDACTED] decided that [REDACTED] was not going to sign the privileging application until CDR Magnes completed the required refresher training. [Tab 7, 34]

50. On 4 November 2010, as per [REDACTED] MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 4 November 2010), CDR Magnes met with [REDACTED] and, "Dr. Magnes found a suitable place to perform his refresher training. We discussed this further and [REDACTED] am in favor of approval of his requested site. [REDACTED] will check with [REDACTED] today to make sure it is OK and let CDR Magnes know. Once all is arranged [REDACTED] asked Dr. Magnes to get a hold of [REDACTED], to come up with a plan regarding the number and type of cases that he will need to do during this time. When finished, this should be forwarded to the [REDACTED] for approval. [REDACTED] discussed this with the [REDACTED] and alerted CDR Magnes that the [REDACTED] approved the requested refresher training site. CDR Magnes should work on getting this set up." [Tab 34]

51. On 12 November 2010, as per CDR Jackson's MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 12 November 2010), CDR Magnes met with [REDACTED] and, "Dr. Magnes phoned the contact person at the hospital in GA [Georgia] where the command approved his refresher training to take place. He needs to show proof of privileges here. [REDACTED] confirmed that [REDACTED] had intended that his privileges be reinstated as soon as the paperwork was completed, but [REDACTED] has decided to forgo returning his privileges until after the refresher training is completed. CDR Magnes alerted me once again that [REDACTED] told him that he could go to a civilian hospital to complete this as long as the cost of housing was not prohibitive. [REDACTED] restated to CDR Magnes that [REDACTED] felt that this was an excellent

choice for his refresher training site and remain in favor of him going there, and encouraged him to talk to the [REDACTED] about getting his privileges reinstated so that he could go there." [Tab 34]

52. On 18 November 2010, as per [REDACTED] MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 18 November 2010), CDR Magnes met with [REDACTED] and, "CDR Magnes shared his experience regarding a phone conversation he had with [REDACTED]. He had a question regarding different types of credentials. He feels that going to the chose refresher training hospital is a 'win-win' for both he and the command and [REDACTED] agree. [REDACTED] subsequently spoke with the [REDACTED] and [REDACTED] agreed. [REDACTED] was instructed to work with [REDACTED] to reinstate Dr. Magnes' credentials. If he needs full credentials to attend this refresher training site, [REDACTED] said that [REDACTED] will sign off on that." [Tab 34]

53. On 23 November 2010, as per [REDACTED] MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 23 November 2010), CDR Magnes met with [REDACTED] and, "[REDACTED] spoke with [REDACTED] and the only option for privileging is to grant full privileges. This may occur only one week prior to the start of the refresher training. CDR Magnes reminded me that one of the requirements of the hospital that he is to perform refresher training at is proof of privileges here. [REDACTED] will talk to the [REDACTED] today. [REDACTED] do not think that it will be a problem granting the privileges now." [Tab 34]

54. On 9 December 2010, as per [REDACTED] MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 9 December 2010), CDR Magnes met with [REDACTED] and, "Dr. Magnes received the pre-application for the refresher training hospital yesterday from [REDACTED]. It requires a listing of the current hospitals where privileges are held. [REDACTED] will talk to [REDACTED] today and recommend that Dr. Magnes' privileges be reinstated now. [REDACTED] will contact Dr. Magnes after [REDACTED] speak with them." [Tab 34]

55. On 17 December 2010, as per Department of the Army Certificate of Training, CDR Magnes completed the Combat Extremity Surgery Course. [Tab 32]

56. On 21 December 2010, as per [REDACTED] MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 21 December 2010), CDR Magnes met with [REDACTED] and, "[REDACTED] told CDR Magnes that the [REDACTED] and [REDACTED] had a phone conversation with [REDACTED]. With the continuing resolution the command does not have the available funds that it usually has. [REDACTED] mentioned that there might be an issue with licensing and malpractice if Dr. Magnes were to go to the GA hospital. [REDACTED] have spoken to the DH of Orthopaedics at Shands-Jax [Shands Jacksonville Medical Center, Jacksonville, Florida] who feels that they could provide him with the refresher training. The command has approved him to go there. Both Dr. Magnes and [REDACTED] agree that the GA hospital would likely provide him with a better experience." [Tab 34]

57. On 30 December 2010, as per [REDACTED] MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 30 December 2010), CDR Magnes met with [REDACTED] and, "Dr. Magnes found out that BUMED has a separate pot of money designated specifically for refresher training and he spoke to the POC [point of contact] who said that all requests have been funded thus far. [REDACTED] told him that the command was aware of this, but did not pursue this option because it was thought that the continuing resolution may not allow this funding source enough money to support this. CDR Magnes also looked at the MOU's [memorandums of understanding] that we currently have and all indicate portability of licensure and malpractice to civilian facilities. [REDACTED] told him that [REDACTED] would speak to [REDACTED] about this on Monday, 3 January 2011. With this new information, [REDACTED] feel confident that [REDACTED] will now approve the GA hospital. [REDACTED] will meet with CDR Magnes at 1400 on 3 January and let him know what [REDACTED] said." The MFR goes on to state that, "[REDACTED] told CDR Magnes that [REDACTED] wanted [REDACTED] to inform the chosen refresher training facility that Dr. Magnes underwent a Fair Hearing and was acquitted, as he felt that it was ethical for the facility to be made aware of what has happened. Dr. Magnes felt strongly that they should be made aware of everything that had happened leading up to this point in order to have an accurate picture of what had transpired, not just that he underwent a Fair Hearing. They should also be told that all his cases were found within standard. Anything less than this would not paint an accurate picture and therefore, would not be the most ethical approach. [REDACTED] also told him that the chair of Orthopaedics at Shands indicated that he would need to get privileges there. Dr. Magnes should be receiving his privileges from NH-Jax reinstated soon, regardless of where the refresher training is performed." [Tab 34]

58. On 20 January 2011, as per [REDACTED] MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 20 January 2011), CDR Magnes met with [REDACTED] and, "[REDACTED] gave Dr. Magnes an update on the refresher training. In short, after Dr. Magnes spoke with him at his office, [REDACTED] phoned the POC for the BUMED refresher training pot of money, [REDACTED] who told me that his situation would not qualify because Dr. Magnes had told [REDACTED] that he had undergone a fair Hearing. Subsequent to their conversation at [REDACTED] told Dr. Magnes that the Command was going to send him no-cost to Shands-Jax, but if they decided against this then he should let [REDACTED] know and apply for the refresher training funding. After speaking with the orthopaedic chairman again at Shands-Jax, [REDACTED] learned that they picked up another fellow, so will not be able to sponsor the refresher training. [REDACTED] spoke to Shands-Gainesville and they are not able to accommodate this either. [REDACTED] have now told Dr. Magnes to push forward with the civilian GA hospital (Piedmont) and he and [REDACTED] will meet again on Monday, 24 January 2011. [REDACTED] has told me that the Command is able to pay for this with mission essential TAD funds." The MFR goes on to state that, "CDR Magnes inquired if his privileges had been reinstated. [REDACTED] has not signed off on them yet. As [REDACTED] told him a few months ago, the Command is concerned that if his privileges are returned he will moonlight at a civilian facility. Dr. Magnes again told [REDACTED] that he was not moonlighting before and has no intention of doing this [moonlighting], and he does not even have a civilian FL [Florida] license to enable him to do so." [Tab 34]

59. On 3 February 2011, as per [REDACTED] MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 3 February 2011), CDR Magnes met with [REDACTED]

and, " gave Dr. Magnes an update on the refresher training. do not think that has signed off on the pre-MOU form for the GA hospital, as of yet. and return on Wednesday, 9 February 2011. It will take the Command at least 6-8 weeks to complete an [sic] MOU with a civilian hospital, regardless of how cooperative the outside hospital is, and our hospital requires a full MOU even if the outside hospital does not. needs this form completed in order to get started on the MOU. has encouraged to pursue a military facility. Both have told that Dr. Magnes should PCS in May 2011. If the refresher training delays PCS for a few weeks, it will likely be OK. CDR Magnes then told that he contacted the group in GA that agreed to take him several months ago, and the physicians are no longer able to accommodate him. He contacted another group and they would like to have him come for his refresher training, but based on desire to have him go to a military facility have asked him to stop pursuing any civilian options. The bottom line is that he will have to go to a military facility. We still plan on the training for March, April and May 2011, to follow the symposium, as we have discussed for some time. The Command has also talked about just sending him for two months. have asked him to let me know which Army/Air Force hospital he would like to go to, once he has a chance to research this." The MFR goes on to state, "CDR Magnes again asked if his privileges had been reinstated. This has not been done yet. will do this at some point before he leaves for refresher training." [Tab 34]

60. On 11 February 2011, as per MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 11 February 2011), CDR Magnes met with and, told CDR Magnes that would not let him stay beyond his PCS date and that even though the Fair Hearing panel recommended a non-Navy site for refresher training, due to time constraints and decided that should pursue Navy sites. called my anesthesiologist friend, who is at and agreed to take CDR Magnes for the refresher training. CDR Magnes once again told me that had told him that he could go to his choice of site, assuming that the cost was not exorbitant, including civilian. As he mentioned to me before, the civilian option had been taken away from him and now a specific Navy site was being dictated to him without any input from him. He felt that he has been extremely vigilant about everything that was asked of him during this entire process and any delays that he endured were out of his control and agreed completely. He did not think that this decision regarding the refresher training was fair or justified. CDR Magnes emailed yesterday with the contact information for the who returned his call yesterday. He told CDR Magnes that he would call several AF Ortho. [orthopaedics] depts. [departments] in order to find the best AF place(s) for him to go and that he would likely get back to CDR Magnes in about a week. The requested that phone him ASAP and did so during our meeting and left my contact information on his voice mail. CDR Magnes also e-mailed him contact info. Yesterday right after their conversation. Dr. Magnes asked if had inquired with any other places and told him that Walter Reed was the only other place and they were concerned because they have a [sic] residents there. think that if we can get the AF site arranged soon that this would be acceptable to the Command. will let Dr. Magnes know what the said after speak with him. If do not hear from him by mid-morning on Monday, 14 February, will call him back in order to try to expedite the process with the AF. proposed to

some time ago that CDR Magnes be allowed to restart practicing here with the help of the other orthopaedists in the Department and perhaps even forgo the refresher training, but said that did not want to do this and was going to follow the decision letter which said he was to go to refresher training. Dr. Magnes alerted me that he submitted to a formal plan at the beginning of January 2010 similar to this to allow him to start practicing here again and said would consider it and get back to him about this, but never contacted CDR Magnes." The MFR went on to state, "CDR Magnes asked about his privileges and mentioned that he and had spoke about he [sic] going to the primary care clinics to help them with their orthopaedic patients and the musculoskeletal exam, but felt that he probably would need to have his privileges reinstated in order to do this. confirmed that he would need privileges to this and has not reinstated them. did not think that it was at all likely that would reinstate them for this purpose. He asked when thought he would get them back and told him that had not said anything recently about this, but feeling was that since it has now been decided that he is going to a military refresher training site, would not reinstate his privileges until after the refresher training was completed." [Tab 34]

61. On 18 February 2011, as per MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 18 February 2011), CDR Magnes met with and, "Dr. Magnes inquired again regarding his privileges. have no new information, but know that has not signed off on them yet. Dr. Magnes again mentioned that it was intention to restore his privileges as soon as the renewal process was completed, and agreed that his was everyone else's impression, as well; however mentioned to Dr. Magnes again that there was no definite date on the letter from indicating when his privileges would be renewed, just that they would be renewed." [Tab 34]

62. On 23 February 2011, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) - September 2011 (PCS),' CDR Magnes completed his interpersonal skills training course. [Tab 7, 33]

63. On 25 February 2011, as per MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 25 February 2011), CDR Magnes met with and, " have not heard back from. Dr. Magnes has been trying to get a hold of as well. have not talked to about this issue for some time. If the AF is unable to accommodate him, CDR Magnes would like to inquire with the Army. should hear back from [NH] Camp Lejeune on Monday, 28 February as to whether they will be able to support the refresher training. I think that the Command will want Dr. Magnes to go to the first place that gives us the OK in order to get the training done ASAP so that he can PCS on schedule as the Command has required." [Tab 34]

64. On 16 March 2011, as per MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 16 March 2011), CDR Magnes met with and, "old CDR Magnes that spoke to 07 March

and asked him to work with the [REDACTED] to coordinate the refresher training at an Army site that did not have orthopaedic residents. CDR Magnes sent me an email indicating that he had contacted [REDACTED] about performing the refresher training at an Army site and [REDACTED] did not think there would be a problem arranging this. The [REDACTED] has not gotten back to me or CDR Magnes regarding refresher training at an AF facility. [REDACTED] has decided that we should not pursue the AF option any further because of the lack of follow-up from them. [REDACTED] said that he would contact us by Friday, 18 March with news from the Army. [REDACTED] will contact CDR Magnes as soon as [REDACTED] hear any new information." The MFR goes on to state, "CDR Magnes inquired about his privileges. [REDACTED] plan is for [REDACTED] and CDR Magnes to meet with [REDACTED] as soon as the refresher training is arranged to ask for his privileges back and alert [REDACTED] of #4 above." The MFR goes on to state, "[REDACTED] told CDR Magnes that if [REDACTED] will not give him his privileges back until after the refresher training is completed, he will not go to the refresher training on an FPPE. If he has his privileges, a refresher training specific FPPE will be arranged. [REDACTED] and [REDACTED] have repeatedly mentioned that his competency needs to be evaluated during this time. [REDACTED] have emphatically stated on numerous occasions that his competency was proven at the Fair Hearing and that his is solely for refresher training not an evaluation of competency, which they have then agreed with. [REDACTED] has also agreed with this. [REDACTED] told CDR Magnes that [REDACTED] am very familiar with these rules because [REDACTED] just rewrote the instruction for this at our command and the events that occurred prior to, during, and after this FPPE were out of standard." [Tab 34]

65. On 22 March 2011, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS)', CDR Magnes was told that he would be going to Naval Health Clinic (NHC) Great Lakes for his refresher training. [Tab 7]

66. On 24 March 2011, as per [REDACTED] MFR (undated), subject, 'Weekly Meeting ICO Scott Magnes, MC, USN,' (date of meeting 24 March 2011), CDR Magnes met with [REDACTED] and, "CDR Magnes alerted [REDACTED] that he will to go [NHC] Great Lakes (GL) for the refresher training. He said that GL has a low surgical volume and they PCS'ed [permanent change of station] an orthopaedic surgeon from there to another duty station last year because of this. He mentioned that [REDACTED] told him that would not be sent to a Navy site (consistent with the Panel's decision), and he could go to the refresher training site of his choice as long as the price was not exorbitant and he was disappointed that he was not able to do that. A Navy site was dictated to him without any input. His goal all along has been to get back to practicing, so he wants to jump on this opportunity in order to make it happen just as soon as possible. [REDACTED] told him that [REDACTED] agreed with his decision and this process has gone far slower than either of us would have liked. [REDACTED] also wished that the site and the process to arrive at that decision would have been different." The MFR goes on to state, "[REDACTED] spoke to [REDACTED] who will not give CDR Magnes back his privileges until after refresher training is completed. At that time, he will receive full privileges and be allowed to return to work here. [Tab 34]

67. On 5 April 2011, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS)', CDR Magnes was told by [REDACTED] that his clinical privileges would be renewed upon completion of the refresher training. [Tab 7]

68. On 11 April 2011, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' CDR Magnes started his refresher training at Naval Health Clinic (NHC) Great Lakes. [Tab 7]

69. On 11 April 2011, as per FITREP and Counseling Record (W2-O6), [REDACTED] signed CDR Magnes' Periodic Regular FITREP for the reporting period 30 July 2010 to 30 April 2011. This was CDR Magnes' first FITREP from [REDACTED] CDR Magnes received a 3.0 in Command or Organizational Climate/Equal Opportunity, Military Bearing/Character, Teamwork, and Mission Accomplishment and Initiative; and a 2.0 in Professional Expertise and Leadership. CDR Magnes' Member Trait Average was 2.57 and the Summary Group Average was 4.06. There were a total of 21 individuals in the summary group. Block 40, recommendations for next career milestone, stated, "None." Block 46, Signature of Individual Evaluated states, 'Certified Copy Provided.' [Tab 24]

70. On 14 July 2011, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' CDR Magnes completed his refresher training and returned to NH Jacksonville. [Tab 7, 47(6)]

71. On 28 July 2011, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' [REDACTED] informed CDR Magnes that [REDACTED] sent a tasker for an upcoming two month deployment to Guantanamo Bay, Cuba, and [REDACTED] wanted to send CDR Magnes. The command was going to expedite CDR Magnes' reprivilaging. According to the timeline, CDR Magnes' privileges were not renewed in time for the deployment and CDR Magnes did not go. [Tab 7]

72. On 2 September 2011, as per CDR Magnes' Reprisal Complaint Letter of 3 November 2011 and CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) – September 2011 (PCS),' CDR Magnes' privileges were renewed. [Tab 5]

73. In September 2011, as per CDR Magnes' testimony, he provided his EOT award input to [REDACTED] [Tab 37, 45]

74. On 9 September 2011, as per CDR Magnes' e-mail to [REDACTED], subject, 'Expungement request for NMCP [Naval Medical Center Portsmouth] PAR [Performance Appraisal Review],' CDR Magnes requested the, "Removal of my NMCP PAR, PAR attachments, and any other associated documents from all records due to its proven inaccuracy on the basis of its author's [REDACTED] subsequent statement under oath that my performance in all categories was satisfactory, in spite of him indicating otherwise in the PAR." [Tab 25]

75. On 12 September 2011, as per [REDACTED] e-mail to CDR Magnes, subject, 'Per your request,' [REDACTED] stated that, "This e-mail is to let you know that your request for the document to be removed from your ICF has been reviewed and the document has been removed." [Tab 21]

76. On 27 September 2011, as per CDR Magnes' e-mail to [REDACTED]

subject, 'PCS,' CDR Magnes wrote, "Thanks again for your help yesterday. I was happy to hear that everything was complete for my upcoming PCS." [Tab 26]

77. On 28 September 2011, as per CDR Magnes' e-mail to [REDACTED] subject, 'Award Application,' CDR Magnes wrote, "Just wanted to check in with you before I leave to make sure that all is in order with the application." [Tab 28]

78. On 30 September 2011, as per [REDACTED] e-mail to CDR Magnes, subject, 'Award Application,' [REDACTED] wrote, "The award is in the system." [Tab 28]

79. On 30 September 2011, as per FITREP and Counseling Record (W2-O6) for the reporting period 1 May 2011 to 30 September 2011, CDR Magnes detached from NH Jacksonville for NHC Great Lakes/CAPT Lovell Federal Health Care Center, North Chicago, Illinois. [Tab 27]

[REDACTED]

81. On 13 October 2011, as per Fitness Report and Counseling Record (W2-O6) for the reporting period 1 May 2011 to 30 September 2011, [REDACTED] signed CDR Magnes' 'Detachment of Individual' FITREP. CDR Magnes' 'Member Trait Average' was a 3.0. CDR Magnes received a 3.0 in each of the six performance traits. Block 40 recommended CDR Magnes for an overseas assignment. Block 41, Comments on Performance' stated, "Next assignment: NHCTH CLINIC GLakes OCONS AUG D, Great Lakes, IL.

*Commander Magnes is a board certified, fellowship-trained Orthopedic Surgeon who completed an external refresher training during this period.*

*Provided instruction for 45 military providers in Advanced Trauma Life Support (ATLS), Defense Medical Readiness Training Institute, Fort Sam Houston, TX. Efforts directly contributed to achievement of certification and increased operational readiness and competency to care for wounded warriors in combatant environments.*

*Non-participation in entire cycle 1 PFA [Physical Fitness Assessment] due to TAD.*

*CDR Magnes is ready to assume responsibilities as an Orthopedic Surgeon at his gaining command."*

Block 46, Signature of Individual Evaluated states, "Certified Copy Provided." [Tab 27]

82. On 27 October 2011, as per [REDACTED] e-mail to [REDACTED] and [REDACTED] titled, 'Award for CDR Magnes,' [REDACTED] requested that [REDACTED] and [REDACTED] notify [REDACTED] if they supported or did not support CDR Magnes' EOT award. [REDACTED] responded, "As per



the direction of [REDACTED] [REDACTED] I am forwarding my denial of CDR Magnes' NMMCM [sic] [Navy and Marine Corps Commendation Medal] award. His contributions as stated in the SOA [Summary of Action] do not merit the award at this time." [Tab 28]

83. On 27 October 2011, as per the NH Jacksonville FY12 Awards Board Tracker [page 1, line 12] and Automated Awards Program Navy and Marine Corps Commendation Medal Physician Scott A Magnes, CDR Magnes' award was approved by the [REDACTED]. During the [REDACTED] deliberations, comments were documented by [REDACTED] on the draft citation that, "1. Award Needs to have cause and effect; 2. Strengthening; 3. Clarification; and 4. Need cause and effect." [Tab 28, 44]

84. On 1 November 2011, as per NH Jacksonville's Automated Awards Program 'tracker' and Awards Board Citation Draft, [REDACTED] did not recommend approval of CDR Magnes' End of Tour Navy and Marine Corps Commendation Medal. [Tab 28]

85. On 2 November 2011, as per NH Jacksonville's Automated Awards Program 'tracker' and Awards Board Citation Draft, CDR Magnes' End of Tour Navy and Marine Corps Commendation Medal was disapproved by [REDACTED] [Tab 28]

86. On 3 November 2011, as per CDR Magnes' reprisal complaint, CDR Magnes called the [REDACTED] with allegations of reprisal. The [REDACTED] e-mailed CDR Magnes a Reprisal Complaint Form. [Tab 5, 6, 7, 15]

87. On 7 November 2011, as per CDR Magnes' undated 'Timeline: May 2008 (arrival at Jax) - September 2011 (PCS)', CDR Magnes was informed that [REDACTED] "Went over my ICF file (sic) (CCQAS) and was concerned about privileging me because of the NMCP PAR. I answer his questions and he tells me that he will approve my privileges and send the application up this COC [chain of command]. [Tab 7]

88. On 13 November 2011, CDR Magnes e-mailed the [REDACTED] documents alleging reprisal. He stated he would be out of the country for two weeks and when he returned, he would forward the remainder of his documents; however, the e-mail was mailed to an incorrect e-mail address and was not received by the [REDACTED] [Tab 5, 6, 7, 15]

89. On 29 November 2011, CDR Magnes forwarded his 13 November 2011 e-mail and the remaining documents to the correct e-mail address and hotline case number 201103664 was opened by the [REDACTED] on 30 November 2011 to address CDR Magnes' reprisal allegations. [Tab 5, 6, 7, 15]

90. On 1 December 2011, as per [REDACTED], e-mail to CDR Magnes, subject, 'Privileges,' [REDACTED] informed CDR Magnes that, "We just got your completed file back late yesterday. You are complete with our process." [Tab 25]

91. On 19 January 2012, as per CDR Magnes' e-mail to [REDACTED], subject, 'Afghanistan deployment,' of 29 February 2012, CDR Magnes' was informed by [REDACTED] that there was a tasker with a by-name request for him to deploy to Afghanistan as an Orthopedics Trauma Surgeon Mentor. [Tab 29, 30, 38]

92. On 20 January 2012, as per [REDACTED] e-mail to CDR Magnes, subject, 'Possible Deployment,' of 20 January 2012, [REDACTED] wrote CDR Magnes stating, "One thing that has come up is a recent tasker for six Navy Orthopods to serve as mentors in Afghanistan. After much debate and discussion, mostly by high ranking flag officer, we were able to reduce this to one Orthopod. Well, that was a few weeks ago, I had thought this one tasker had went away, but then yesterday was told we had to fill it. I discussed with NAVEAST [Navy Medicine East] several potential folks, and I know you like teaching and traveling, Great Lakes is over-manned and was hoping you were willing. As mentioned, this tasker is HIGH visibility for Navy Orthopedics, and I think you would make a great ambassador. I would be happy to discuss with you, the Department Head or DSS [Director of Surgical Services]." [Tab 30]